

CIVIL SERVICE COMMISSION MINUTES

March 28, 2002

A special meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Roy Dixon
Sigrid Pate
Mary Gwen Brummitt

Absent was:

Gordon Austin

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
March 28, 2002

2:00 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>2,3</u>			<u>4,5</u>

COMMENTS Motion by Pate to approve all items not held for discussion; seconded by Dixon. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Dixon: Wendell Prude, S.E.I.U. Local 2028, on behalf of **John Neal**, Detentions Nurse Practitioner, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

B. Commissioner Newman: Barrett J. Foerster, Esq., on behalf of **John Jimenez**, former Deputy Public Defender V, appealing an Amended Final Order of Removal and Charges from the Department of the Public Defender.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the Vice President of the Commission.

CONFIRMATION OF ASSIGNMENTS

1. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Kelli Gibbs**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Confirmed.

DISCIPLINES

Findings

2. Commissioner Dixon: Wendell Prude, S.E.I.U. Local 2028, on behalf of **John Neal**, Detentions Nurse Practitioner, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Conduct unbecoming an officer of the County of San Diego (changing ordered prescriptions); Cause II - Failure of Good Behavior; Cause III - Acts incompatible or inimical to the public service. Employee has been a Detentions Nurse Practitioner (NP) in the Sheriff's Department for more than 15 years. Among his duties at the George Bailey Detentions Facility, Employee was responsible for ensuring that inmates received medications prescribed by their treating physicians. The fundamental factual allegations were not disputed. Employee changed prescriptions of Motrin with respect to the intervals at which inmates received the medication. At issue is whether Employee, in making these changes, exceeded his authority under his state license and/or the Department Policies and Procedures.

The Department's written policies and procedures did recommend a prescription regimen with respect to which Employee's modifications were more consistent than were the regimens in the original prescriptions written by the prescribing physician, Dr. Torchia. A Section of the Department's Policy and Procedure Manual referring to "Physician's Orders" recommends that medications be provided at specific times. Additionally, this section states: "DO NOT alter a written order." The section explains that ambiguities should be clarified by contacting the prescribing physician. However, this section appeared to be directed primarily at Registered Nurses and Licensed Vocational Nurses and it was unclear, in light of other Department policies and testimony at the Commission hearing, if it encompassed NPs. At the Commission hearing, Employee also introduced into evidence a proposed "Standardized Certified Nurse Practitioner Protocol" to allow NPs "to continue medications found to be effective and ongoing in the treatment of chronic illness."

Appellant introduced testimony and documentary evidence of the reasons for the Department's recommended medication times and intervals. In sum, this evidence showed that having standardized or uniform times for dispensing medication has security and administrative benefits, especially useful for widely prescribed medications like Motrin. The preponderance of testimony at the Commission hearing indicated that the established practice at the George Bailey Detention Facility was as follows: If nurses received inmate prescriptions for Motrin wherein the prescribing physician did not conform to the interval regimen recommended by the Department Policy and Procedures, they would take such prescriptions to the Department physician or NP on duty who would change the prescription (by writing a new "physician's order") to so conform. The underlying investigation leading to the discipline at issue in this appeal, commenced as a result of a conversation Employee had with Amy Smith, the Office Administrator for Dr. Torchia. In that conversation, Employee informed Ms. Smith that he had been changing Dr. Torchia's prescriptions to conform with the recommended interval protocol. Employee requested that she suggest to Dr. Torchia that he conform to the Department's existing Motrin protocols. The Department was likely alarmed and chagrined when it commenced its investigation of Employee.

The "standardized procedures" set forth in the Department's Policy and Procedure Manual, or elsewhere, did not satisfy the extensive and detailed requirements necessary to allow "furnishing of drugs" by NPs like Employee. Even if the Department's procedures did allow such furnishing of drugs by NPs, Business and Professions Code Section 2836.1 does not, expressly or implicitly, authorize changing a physician's prescription in any manner without first obtaining his or her approval. It is Employee's responsibility to ensure that he is complying with his licensing requirements. Employee was clearly negligent in not earlier contacting Dr. Torchia, subsequent to changing numerous prescriptions.

In mitigation, Employee appeared to be motivated by a good faith effort to conform with Department policy and practice, as established by a history of meetings concerning the subject. The Department is partially at fault for failing to clarify its policies with respect to Nurse Practitioners and for failing to reconcile the actual practice within the Detention Facility with its written Policies & Procedures. Additional mitigation can be found in the fact that the changes were made with respect to a medication that is widely available without a prescription and that the changes were relatively minor and reflected a consensus arrived at by other detention facility physicians. By a preponderance of evidence, the Department proved all of the charges contained in the Order of Pay Step Reduction and Charges. Employee is guilty of Causes I, II and III. However, the severity of the charges was mitigated by extenuating circumstances. It is therefore recommended that Employee's discipline be modified to a pay step reduction equivalent to the total of three (3) working days (24 hours); that Employee be awarded back pay and interest thereon, and benefits, for two (2) working days (16 hours); that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Motion by Dixon to approve Findings and Recommendations; seconded by Pate. Carried.

3. Commissioner Newman: Barrett J. Foerster, Esq., on behalf of **John Jimenez**, former Deputy Public Defender V, appealing an Amended Final Order of Removal and Charges from the Department of the Public Defender.

FINDINGS AND RECOMMENDATIONS:

The matter of the appeal of John Jimenez from a written Amended Final Order of Removal and Charges was duly noticed and came on for hearing on March 13, 14, 15, 25 and 26, 2002. However, prior to the conclusion of the hearing, representatives of the two parties entered into a Resignation, Release and Settlement Agreement. Mr. Foerster, on behalf of Appellant stated that pursuant to the settlement agreement, Appellant would be withdrawing his appeal. It is therefore recommended that the withdrawal of Civil Service Appeal, based upon the Resignation, Release and Settlement Agreement of the parties dated March 28, 2002, be approved by the Commission and incorporated herein by reference; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Commission.

Motion by Newman to approve Findings and Recommendations; seconded by Pate. Carried.

SELECTION PROCESS

Complaints

4. **Larry Sweet**, Program Specialist, HHSA, appealing the Department of Human Resources' decision that he is ineligible to compete in the recruitment for the classification of Health and Human Services Administrator III. (Continued from the Commission meeting of March 20, 2002)

RECOMMENDATION: Continue.

Subsequent to the disbursement of this Agenda, DHR determined that Mr. Sweet is eligible to compete in the recruitment for the classification of Health and Human Services Administrator III. Mr. Sweet requested a withdrawal of his appeal.

Withdrawn.

OTHER MATTERS

Evidentiary Hearing

5. Everett Bobbitt, Esq., on behalf of **Tom Basinski**, District Attorney Investigator, requesting an independent review in an evidentiary hearing based on a memorandum from a District Attorney Lieutenant to Mr. Basinski that constitutes an alleged reprimand. (Continued from Commission meetings of March 6 and March 20, 2002)

Recommendation: Allow parties to address the Commission.

Subsequent to the disbursement of this Agenda, Everett Bobbitt, Esq., on behalf of Mr. Basinski requested a withdrawal in this matter.

Withdrawn.

Extension of Temporary Appointments

6. Health and Human Services Agency

12 Social Worker I's (Maria Solorzano, Melissa Sawyer, Delphone Cooper, Christina Lirio, Phyllis Greenfield, Veronica Escalante-Felix, Nathaniel Stephens, Liliana Guizar, Marisa Rosales, Aurea Rodriguez, Jazmin Pinedo, Angelina Cabrera)

7. Department of Public Works

1 Departmental Personnel Officer I (Teresa Wiatrowski)

RECOMMENDATION: Ratify Item Nos. 6 & 7.

Item Nos. 6 & 7 ratified.

8. Public Input.

ADJOURNMENT: 2:50 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE APRIL 17, 2002.